

FILED

AUG 27 2004

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GEORGE CANNING
60 Sycolin Road
Leesburg, VA 20175

Plaintiff,

v.

U.S. DEPARTMENT OF DEFENSE
c/o General Counsel
1600 Defense Pentagon
Washington, DC 20301-1600,

Defendant.

CASE NUMBER 1:04CV01464

JUDGE: Gladys Kessler

DECK TYPE: FOIA/Privacy Act

DATE STAMP: 08/27/2004

COMPLAINT FOR INJUNCTIVE RELIEF
(Freedom of Information Act 5 USC 552)

Jurisdiction and Venue

1. This is an action under the Freedom of Information Act ("FOIA"), 5 USC 552, as amended, to order the production of agency records which are being improperly withheld from plaintiff.

2. This Court has jurisdiction over this action pursuant to 5 USC 552(a)(4)(B), and venue is proper.

3. Plaintiff George Canning, the requester of the record, is a resident of Leesburg, Virginia.

4. Defendant U.S. Department of Defense ("DOD") is an agency of the United States, and has possession and/or control of the records and information sought by plaintiff.

5. The Department of the Army ("Army"), from which records and information is being sought, is a component of the U.S. Department of Defense.

6. The records requested are records created and maintained by defendant. Upon information and belief, the requested records are still under the jurisdiction and control of the DOD.

7. Plaintiff has exhausted his administrative remedies as provided for in 5 USC 552(a)(6).

8. Pursuant to the FOIA, 5 USC 552(a)(3), plaintiff has a right of access to the information he seeks, and there is no legal basis for defendant's denial of said right. Defendant is thus unlawfully withholding the requested information in violation of the FOIA.

Plaintiff's FOIA Requests

1. FOIA Request To Army FOIA Office

9. On August 13, 1998, plaintiff telephoned Fort Pickett, Virginia ("Fort Pickett"), to inquire how to file an FOIA request for records of the fort in the time frame 1986. He was told that the fort was at present a National Guard fort, but in 1986 it was a U.S. Army facility.

10. On August 14, 1998, plaintiff telephoned the Army's Office of General Counsel to inquire where, under the above-cited circumstances, to send an FOIA request for 1986 records

concerning Fort Pickett. He was told to send such a request to the Army's FOIA Office, and was provided with its address in Springfield, Virginia.

11. By letter dated August 17, 1998 plaintiff wrote to the Army FOIA Office, and requested all information concerning the training of Virginia State Police personnel at Fort Pickett, Virginia in late September 1986 in preparation for a joint federal-state search-and-seizure raid in Leesburg, Virginia in October 1986, on offices of publishers associated with Lyndon H. LaRouche, Jr. He asked that searches be conducted of the records of Fort Pickett, of the Office of the Secretary of the Army (and any of his or her subordinates), and of any offices responsible for liaison with federal agencies, or state officials and agencies. He asked that if records had been sent to a Federal Records Center, they be located and retrieved. (See Exh. 1, attached hereto.)

12. By letter dated November 4, 1998, the Army FOIA Office informed plaintiff that his FOIA request had been referred to the Office of the Deputy Chief of Staff For Operations and Plans (DCSOPS) at the Pentagon. (See Exh. 2, attached hereto.)

13. By letter dated January 13, 1999, the Office of the Deputy Chief of Staff For Operations and Plans informed plaintiff that the requested information is not under DCSOPS's "functional area of responsibility," and suggested he request the information

from the Fort Pickett historical files at the Army Center for Military History. (See Exh. 3, attached hereto.)

14. By letter dated January 19, 1999, plaintiff wrote to the Army FOIA Office to request that specific searches which he had specified in his FOIA request - i.e. (a) of the Office of the Secretary of the Army and any of his or her subordinates, (b) any office(s) responsible for liaison with other federal agencies or state officials or agencies, and (c) a Federal Records Center if necessary - be conducted. (See Exh. 4, attached hereto.)

15. By letter dated April 5, 1999, the Army FOIA Office informed plaintiff that notwithstanding DCSOPS's January 13, 1999 response, further coordination between the FOIA Office and DCSOPS had revealed that "the Department of the Army activity responsible for support to civilian law enforcement is the Military Support Division, within DCSOPS." The letter further informed plaintiff that his FOIA request had been referred back to DCSOPS. (See Exh. 5, attached hereto.)

16. By letter dated April 13, 1999, the Office of the Deputy Chief of Staff For Operations and Plans informed plaintiff that no responsive record had been found. (See Exh. 6, attached hereto.)

17. By letter dated June 9, 1999, plaintiff administratively appealed the non-searches of the Office of the Secretary of the Army or any other relevant locations of the

civilian segment of the Army command, and the failure of DCSOPS to search its Military Support Division. (See Exh. 7, attached hereto.)

18. By letter dated August 26, 1999, Army's Office of the General Counsel acknowledged plaintiff's appeal. (See Exh. 8, attached hereto.)

19. The Army has not further communicated with plaintiff concerning his administrative appeal.

2. FOIA Request To Army Center for Military History

20. By letter dated January 19, 1999, plaintiff wrote to the Army Center for Military History (as suggested by DCSOPS), and requested the same information which he had requested from the Army FOIA Office in August 1998 (supra). (See Exh. 9, attached hereto; attachments omitted.)

21. By letter dated March 5, 1999, the Army Center of Military History informed plaintiff it had no responsive record. The letter further suggested that because Fort Pickett had been a "sub-installation" of Fort Lee, Virginia and Fort Bragg, North Carolina, FOIA requests might be sent to those locations. (See Exh. 10, attached hereto.)

3. FOIA Request To Fort Lee

22. By letter dated March 10, 1999, plaintiff wrote to the FOIA Office at Fort Lee, Virginia ("Fort Lee"), and requested the

same information which he had requested from the Army FOIA Office in August 1998 (supra). (See Exh. 11, attached hereto; attachments omitted.)

23. By letter dated April 14, 1999, Fort Lee informed plaintiff that Fort Lee and its records had been transferred to Fort McPherson, and that his FOIA request was being transferred to the FOIA office at Fort McPherson, Georgia ("Fort McPherson"). (See Exh. 12, attached hereto.)

24. By letter dated January 12, 2001, plaintiff requested that Fort McPherson release the requested information, and enclosed a copy of his FOIA request to Fort Lee. (See Exh. 13, attached hereto; enclosure omitted.)

25. By letter dated January 17, 2001, Fort McPherson informed plaintiff it had no record of having received his FOIA request from Fort Lee, and that it would begin to process his FOIA request. (See Exh. 14, attached hereto.)

26. By letter dated January 30, 2001, Fort McPherson informed plaintiff that his FOIA request was "misdirected," and that his request was being forwarded to the FOIA office at Fort Pickett. (See Exh. 15, attached hereto.)

27. By letter dated March 14, 2001, Fort McPherson informed plaintiff that no responsive record had been found. (See Exh. 16, attached hereto.)

28. Plaintiff has received no response from Fort Pickett.

4. FOIA Request To Fort Bragg

29. By letter dated March 10, 1999, plaintiff wrote to the FOIA Office at Fort Bragg, North Carolina ("Fort Bragg"), and requested the same information which he had requested from the Army FOIA Office in August 1998 (supra). (See Exh. 17, attached hereto; attachments omitted.)

30. By letter dated March 22, 1999, Fort Bragg informed plaintiff that it had assumed functional responsibility for Fort Pickett on October 1, 1986, and that that responsibility had been transferred to Fort McCoy, Wisconsin in 1994. The letter further informed plaintiff that it had only maintained Fort Pickett personnel records, and that Fort Pickett had had its own records management program. The letter also informed plaintiff that some of the units he had specified for search were under the purview of the Army's Special Operations Command, and that therefore his FOIA request had been referred to the Commander of the Special Operations Command. (See Exh. 18, attached hereto.)

31. By letter dated July 6, 1999, the Special Operation Command informed plaintiff that it had completed processing his request, and had referred it to DCSOPS for response to plaintiff. (See Exh. 19, attached hereto.)

32. By letter dated August 9, 1999, DCSOPS informed plaintiff that no responsive record had been found by the XVIII

Airborne Corps and the Special Operations Command. (See Exh. 20, attached hereto.)

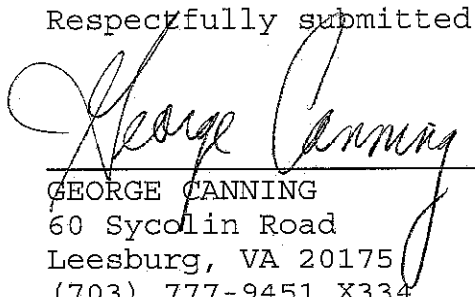
Prayer For Relief

WHEREFORE, Plaintiff prays this Court:

- (1) Take jurisdiction of this case;
- (2) Order defendant to make an adequate search for the records requested;
- (3) Order defendant to permit access to all responsive records;
- (4) Order defendant to provide copies of the responsive records at no cost to plaintiff;
- (5) Award plaintiff his costs, pursuant to 5 USC 552 (a) (4) (E); and
- (6) Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Dated: August 27, 2004



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Plaintiff Pro Se